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 MERITAS LAW FIRMS WORLDWIDE

February 24, 2005

TTAB

Via U.S. Express Mail

Commissioner for Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

Re: *Walters Gardens, Inc. vs. Pride of Place Plants, Inc.*
Opposition No. 91153755
Our File No. 95043.003

Dear Sir or Madam:


Please find enclosed a Reply to Applicant's Opposition to Reset Rebuttal Testimony and Briefing Periods in triplicate, Certificate of Service and Certificate of Express Mail for filing in the captioned opposition.

Thank you for your assistance.

Very truly yours,

MILLER, JOHNSON, SNELL & CUMMISKEY, P.L.C.

By


Barry C. Kane

BCK/nf
Enclosures
#911333



02-24-2005

U.S. Patent & TMOtc/TM Mail Rcpt Dt. #72

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

WALTERS GARDENS, INC.)	
)	
vs. Opposer,)	Opposition No. 91153755
)	
PRIDE OF PLACE PLANTS, INC.)	Mark: PIILU
)	Serial Nos: 76/201/447
Applicant.)	Filed: January 29, 2001
)	
)	
)	

**REPLY TO APPLICANT'S OPPOSITION
TO RESET REBUTTAL TESTIMONY AND BRIEFING PERIODS**

Applicant opposes Walters Gardens' request to reset the rebuttal testimony and briefing periods on grounds that the parties had agreed upon only a two-week extension and that Walters Gardens received a copy of the Sorenson testimony transcript well in advance of the date filed by Applicant. Walters Gardens states that was partially the initial agreement between the parties. However, Applicant was also required to file with the Board at the time of submitting the transcript another document resetting the dates. This was not done. As a result, Applicant failed to fulfill the bargain and Walters Gardens is compelled to protect its position and not be prejudiced in this proceeding.

In this instance, the filing of the testimony transcript of Sorenson by Applicant is the final draft as reviewed by the witness. The transcript received earlier was an electronic copy and did not contain any corrections or additional testimony provided by the witness in any errata sheet. The receipt of the official transcript starts the 30-day review period Walters Gardens is entitled to under the rules to insure that the final

testimony of the witness need not be countered. It would be unfair to force the Opposer to rely upon an earlier and unofficial version of any testimony just to find later that the official testimony is at odds with that relied upon earlier.

Applicant's failure to file the stipulation also prejudiced Walters Gardens. Applicant's failure to file the stipulation did not place the Board on notice of the agreement in the schedule. Had Walters Gardens not acted, Applicant would have been able to move to dismiss the opposition on grounds Walters Gardens failed to present the testimony. In light of the failure to comply with the terms, any agreement was voidable. Walters Gardens exercised that option by filing the request to reset the periods.

In clear of the breach of any stipulation agreed upon by the parties, the Rules are quite clear that the time for rebuttal testimony and briefing periods do not begin to run until Applicant files the testimony transcripts obtained during its testimony period. Applicant is not prejudiced by this adjustment of the schedule. Accordingly, Walters Gardens requests the Board to grant its request.

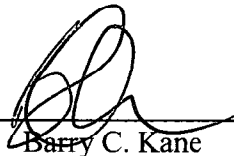
Respectfully submitted,

MILLER, JOHNSON, SNELL & CUMMISKEY, P.L.C.

Attorneys for Opposer Walters Gardens, Inc.

Dated: February 24, 2005

By



Business Address:

250 Monroe Avenue, N.W., Suite 800
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Telephone: (616) 831-1700

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

WALTERS GARDENS, INC.)

Opposer,)

vs.)

PRIDE OF PLACE PLANTS, INC.)

Applicant.)

Opposition No. 91153755

Mark: PIILU

Serial Nos: 76/201/447

Filed: January 29, 2001

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Reply to Applicant's Opposition to Reset Rebuttal Testimony and Briefing Periods has been deposited in the United States Postal Service, first-class postage prepaid, addressed to Gary J. Nelson at CHRISTIE, PARKER & HALE, LLP, Attorneys for Applicant, 350 W. Colorado Blvd., Suite 500, P.O. Box 7068, Pasadena, California 91109-7068, (626) 795-9900, this 24th day of February 2005.

By



Attorney for Opposer

Barry C. Kane

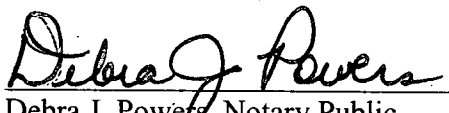
250 Monroe Avenue, N.W., Suite 800

PO Box 306

Grand Rapids, Michigan 49501-0306

Telephone: (616) 831-1700

Subscribed and sworn to before me
this 24th day of February 2005



Debra J. Powers, Notary Public

State of Michigan, County of Kent

My Commission Expires: 07/07/06

Acting in the County of Kent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

WALTERS GARDENS, INC.)

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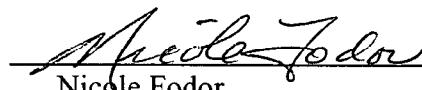
Filed: January 29, 2001

CERTIFICATE OF EXPRESS MAILING

I hereby certify that the attached Reply to Applicant's Opposition to Reset Rebuttal Testimony and Briefing Periods and related papers are being deposited with the United States Postal Service using Express Mail Service, Express Mail Label No. EV 436 429 526 US in an envelope addressed to:

Commissioner for Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

on February 24, 2005.



Nicole Fodor

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